

FOR THE DISTRICT OF NEW MEXICO

**JOSE E. GONZALES, PETER J. GOMEZ,
EMELINA GRANT, TERESITA GARCIA
MARTINEZ and LEONORA ERNESTINA
MONTOKA,**

Plaintiffs,

No. 00-CV-60 WPJ/RS ACE

v.

**UNITED STATES OF AMERICA, and BILL
RICHARDSON, Secretary of the
DEPARTMENT OF ENERGY,**

Defendants.

PAJARITO PLATEAU HOMESTEADERS, INC.,

Plaintiffs,

No. 01-CV-588 MCA/RLP ACE

v.

UNITED STATES OF AMERICA, et al.

Defendants.

**SPECIAL MASTER'S FIRST AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AS TO TRACT E 24, AND SECOND AMENDED
FINDINGS FOR TRACT E29**

I. GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

All of the general findings and conclusions set forth in the Special Master's Initial Findings of Fact and Conclusions of Law file on April 14, 2006 are incorporated by reference herein as if fully set forth. Based upon those general findings, what follows are specific findings and conclusions for Tract E24 and for Tracts E29, amending those filed on October 24, 2006 for those tracts.

II. TRACT E24 SPECIFIC FINDINGS AND CONCLUSIONS

The Special Master's Initial Findings of Fact and Conclusions of law for Tract E24 and attached Exhibit 4 were filed on October 24, 2006. As set forth in the procedural history in that document, the Pajarito Plateau Homesteader's Association and the family representatives have made substantial efforts to locate descendants of Juan Luis Garcia who would be entitled to a claim for this tract. Additional information provided by the Homesteader's Association after the filing of those findings and conclusions requires additional findings and conclusion, and an amendment to Exhibit 4 reflecting those changes. The reasons for these amendments are set forth in the amended findings and conclusions below.

A. ADDITIONAL FINDINGS OF FACT

Based upon the additional information provided after the filing of the initial findings for Tract E24, the additional facts set forth below have been proved to be true by a preponderance of the evidence.

15. Manuel R. Garcia was one of five of the seven children of Juan Luis Garcia by his first wife, Leonora, who left descendants entitled to an award for this tract, and who could be located. Manuel's descendants are entitled to a 1/5 of 1/2 share of the award allocated to Tract E24 under the payment formula, all as set forth in amended Exhibit 4.

16. All eight of Manuel's children are deceased. One of them, Ernesto, died without spouse or issue. All of the remaining seven children's descendants were identified, located and contacted by the Homesteader's Association. All filed claims in this case before the filing of the October 24, 2006 Findings and Conclusions except Daniel L. Maestas, one of three children of Manuel's deceased daughter Tomasita Garcia Maestas.

17. When contacted by his siblings and Judy Espinosa, President of the Homesteader's Association, Daniel Maestas refused to file a claim. Specifically,

he indicated to all of them that he did not wish to provide any social security information or banking information, preferred not to file a claim, and wished to have his name removed from the eligible claimants list. This was done, and he was not included in Exhibit 4 as an eligible claimant.

18. Daniel Maestas' two siblings who filed claims in this case are Cecilia Sanchez and Celestino F. Maestas. According to the payment formula, they were awarded a $\frac{1}{2}$ of $\frac{1}{7}$ of $\frac{1}{5}$ of $\frac{1}{2}$ share of the total award for Tract E24.

19. After the filing of the Findings and Conclusions, Daniel L. Maestas has had a change of heart. He contacted Ms. Espinosa, and indicated that he had been extremely ill, almost blind, recovering from surgery, and had been unable to understand what this award was about. After it was explained to him by family members when he was feeling better, he now understands this award and wishes to participate. His siblings have confirmed all of this information.

20. The only persons who are affected by his request are his siblings, Cecilia Sanchez and Celestino F. Maestas, who do not object to his being added as a participant. The formula change would now reflect an award of $\frac{1}{3}$ of $\frac{1}{7}$ of $\frac{1}{5}$ of $\frac{1}{2}$ of the total award for Tract E24 each to Tomasita's three children.

21. General Finding number seven of the Initial Findings of Fact and Conclusions of Law approved by the Court on May 16, 2006, provides that the Legislation which governs this settlement procedure favors the inclusion and not the exclusion of legitimate claims.

B. ADDITIONAL CONCLUSIONS OF LAW

Based upon the above Findings of Fact, these additional conclusions of law are reached as to the awards for Tract E24:

5. Daniel L. Maestas is an eligible claimant in this case to receive a $\frac{1}{3}$ of $\frac{1}{7}$ of $\frac{1}{5}$ of $\frac{1}{2}$ share of the award allocated for Tract E24, and has provided a reasonable and acceptable explanation for his failure to file a timely claim;

6. It is in the interest of justice and in the spirit of the legislation which governs this settlement procedure that the claim of Daniel Maestas be included, and none of the persons effected by his claim oppose its inclusion, so that Exhibit 4 should be amended to reflect his share of the award according to the payment formula.

C. ERRATA

Conclusions of Law for Tract E24 numbered 10 and 11 are re-numbered as 3 and 4.

III. TRACT E29 AMENDMENT TO INITIAL FINDINGS AND CONCLUSIONS

As set forth in the October 24, 2006 Amended Findings for Tract E29, Gloria Diana, Jose Leandro and Jose Malequias Martin Garcia were the only children of Jose Luis Garcia Jr., who could be located by diligent search. In the Amended Conclusions of Law, the name of Jose Malaquias Martin Garcia was inadvertently omitted as an eligible claimant entitled to a claim. Therefore, that additional conclusion of law should be amended to read:

“ADDITIONAL CONCLUSION OF LAW

The share to which Mary Ann and Mary Jo Garcia would be entitled as descendants by intestate succession of an original eligible claimant, passes to their half siblings, Gloria Diana, Jose Leandro and Jose Malequias Martin Garcia. The share according to the formula is set forth in Amended Exhibit 4 attached to these Initial Findings and Conclusions. “

IV. SUBMITTAL STATEMENT FOR THESE FINDINGS AND CONCLUSIONS

Upon the filing of these Amended Findings of Fact and Conclusions of Law, any disputing claimant who disagrees with these findings has, under section D4 of the Procedure, thirty days to object to these Findings and Conclusions. If no objection is made, upon the Court's order approving the findings, these tracts will be submitted for payment with all the rest. In the event objections are made, the Court can provide the relief to claimants he deems proper for a final resolution of the dispute. The Special Master is available to respond to any order the Court should make at that time.

Respectfully Submitted,

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S/_____
JOSEPH E. CALDWELL
SPECIAL MASTER